



E. DANYA PERRY
212-399-8340 PHONE
dperry@perryguha.com EMAIL

April 17, 2023

VIA ECF

Honorable Mary Kay Vyskocil
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 18C
New York, NY 10007

**Re: *Bragg v. Jordan*,
Case No. 1:23-cv-03032**

Dear Judge Vyskocil:

Proposed *Amici* (Karen Friedman Agnifilo, Marc Agnifilo, Donald B. Ayer, Benjamin Brafman, Erwin Chemerinsky, E. Thomas Coleman, Mickey Edwards, Norman L. Eisen, John J. Farmer Jr., Stuart Gerson, Renato Mariotti, Michael Miller, Alan Charles Raul, Sarah Saldaña, Claudine Schneider, Peter Shane, Christopher Shays, Stanley A. Twardy, Jr., Cyrus Vance, Jr., William F. Weld, and Shan Wu) are former members of Congress, former prosecutors, former government attorneys, and scholars. With consent of the Plaintiff,¹ proposed *Amici* respectfully move for leave to file the accompanying brief.²

“A district court has broad discretion to grant or deny an appearance as amicus curiae in a given case.” *Anderson v. Leavitt*, No. 03–cv–6115, 2007 WL 2343672, at *2 (E.D.N.Y. Aug 13, 2007) (citing *Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007)). “An amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *C & A Carbone, Inc. v. Cnty. of Rockland, NY*, No. 08-CV-6459-ER, 2014 WL 1202699, at *3–4 (S.D.N.Y. Mar. 24, 2014) (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)). Furthermore, leave to file an *amicus* brief may be granted even when the parties “are represented by competent counsel and some of the arguments proffered in the proposed *amicus* brief are duplicative,” so long as “the Court nevertheless finds the *Amici*’s perspective to be helpful.” *Id.* at *4.

Proposed *Amici* submit that they have a helpful perspective on this case. Collectively, they have decades of experience in congressional oversight or prosecuting cases at the state and federal level. They have substantial experience with the structure and process of congressional and law enforcement investigations, including investigations involving public officials. Given their

¹ *Amici*’s counsel conferred with Plaintiff’s and the congressional Defendants’ respective counsel concerning the filing of *Amici*’s brief. Plaintiff consents to the filing of the brief. The congressional Defendants take no position as to the filing of this brief.

² No party’s counsel authored the brief in whole or in part; no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person – other than counsel for *Amici* – contributed money that was intended to fund preparing or submitting the brief.

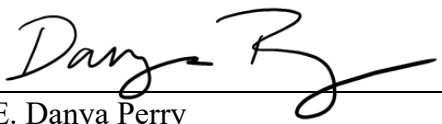
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decades of public service, familiarity with the congressional, law enforcement, and constitutional matters at issue here, and commitment to the rule of law, *Amici* maintain an active interest in the proper resolution of the important questions raised by the Plaintiff's request for injunctive relief.

For the foregoing reasons, the proposed *Amici* respectfully request permission to file an amicus brief, which is attached as an Exhibit hereto as: [Proposed] Brief of Former Members of Congress, Prosecutors and Other Interested Parties as *Amici Curiae* in Support of Plaintiff Alvin L. Bragg, Jr.'s Motion for Interim Injunctive Relief.

Thank you for your consideration.

Respectfully submitted,



E. Danya Perry

cc: All counsel (By ECF)

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APPENDIX: LIST OF *AMICI*

The *Amici* listed below join this brief as individuals and do not represent or advise any party in the matter; institutional affiliation is noted for informational purposes only and does not indicate endorsement by institutional employers of the positions advocated in this brief.

Former Members of Congress

E. Thomas Coleman served in the U.S. House of Representatives from 1976 to 1993 (R-Missouri). Prior to his congressional service he was an Assistant Attorney General of Missouri and twice elected to the Missouri House of Representatives.

Mickey Edwards served in the U.S. House of Representatives from 1997 to 1993 (R-Oklahoma). He was one of the three founding trustees of the Heritage Foundation and national chairman of both the American Conservative Union and Washington's annual Conservative Political Action Conference.

Claudine Schneider served in the U.S. House of Representatives from 1981 to 1991 (R-Rhode Island). Before her Congressional service, Ms. Schneider was a producer and host of an NBC affiliate's public affairs program, a Federal Coordinator for the Rhode Island Coastal Zone Management Program, and Executive Director of the Conservation Law Foundation.

Christopher Shays served 34 years in public office (R-Connecticut), 13 years as a state representative from Stamford and 21 years as congressman for the Fourth District of Connecticut. In Congress he served as vice chairman of the Budget and Government Reform Committees, and chairman of the Government Reform Committee's National Security Committee. After Congress, Shays became co-chairman of the Commission on Wartime Contracting focusing on Iraq and Afghanistan.

Former Prosecutors and Other Experts

Karen Friedman Agnifilo served as Chief Assistant District Attorney and as Executive ADA and Chief of the Trial Division in the Manhattan District Attorney's Office under Cyrus Vance, Jr. (2010-2021); General Counsel to the New York City Mayor's Criminal Justice Coordinator (2006-2010); and an Assistant District Attorney in Manhattan (1992-2006).

Marc Agnifilo served as an Assistant U.S. Attorney and as an Assistant District Attorney in the Manhattan District Attorney's Office. He is currently Senior Trial Counsel at a private practice law firm where he focuses on complex criminal cases.

Donald B. Ayer served as Deputy Attorney General at the U.S. Department of Justice from 1989 to 1990; Principal Deputy Solicitor General of the United States from 1986 to 1989; and U.S. Attorney for the Eastern District of California from 1981 to 1986. He has argued nineteen cases in the U.S. Supreme Court.

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Benjamin Brafman is a seasoned criminal defense attorney with one of the highest acquittal records in New York City. Before entering private practice in 1980, he served as an Assistant District Attorney in the Rackets Bureau of the New York District Attorney's Office.

Erwin Chemerinsky is a renowned professor of constitutional law, and the author of eight books and more than 200 articles in leading law reviews. He is the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at the University of California, Irvine School of Law. He was formerly a professor of law at the University of Southern California for more than twenty-one years.

Norman L. Eisen served as President Barack Obama's special counsel and special assistant for ethics and government reform from 2009-11. He was U.S. Ambassador to the Czech Republic from 2011-14. He served as Special Counsel to the U.S. House of Representatives Committee on the Judiciary for the first impeachment and trial of Donald Trump.

John J. Farmer Jr. served as an Assistant U.S. Attorney, New Jersey Attorney General, Senior Counsel to the 9/11 Commission, and Dean of Rutgers Law School, and is currently Director of the Eagleton Institute of Politics. He also served on New Jersey's Executive Commission on Ethical Standards, Advisory Committee on Judicial Conduct, and the State Commission of Investigations.

Stuart Gerson served as Acting Attorney General of the United States during the early Clinton Administration, as President George H.W. Bush's Assistant Attorney General for the Civil Division of the Justice Department, as an advisor to several Presidents, and as an Assistant U.S. Attorney for the District of Columbia (1972-1975).

Renato Mariotti served for nine years as a federal prosecutor at the U.S. Attorney's Office for the Northern District of Illinois. He is currently a partner at a private practice law firm where he focuses on many types of complex high-stakes litigation, including private equity and hedge fund litigation, derivative-related claims and cyber theft.

Michael Miller served as an Assistant District Attorney in the New York County District Attorney's Office, including three years in the Trial Division and five years in what was known then as the Frauds Bureau (1985-1993). He is currently a partner at a private practice law firm with a focus on white collar criminal defense and commercial litigation.

Alan Charles Raul served as Associate Counsel to the President (1986-1988); General Counsel of the Office of Management and Budget (1988-1989); General Counsel of the U.S. Department of Agriculture (1989-1993); and Vice Chairman of the White House (and, later, independent) Privacy and Civil Liberties Oversight Board (2006-2007, 2007-2008).

Sarah R. Saldaña served as the U.S. Attorney for the Northern District of Texas (Dallas) from 2011 to 2014 and was appointed to the Attorney General's Advisory Committee during her tenure. Since 2004, she had served as an Assistant U.S. Attorney in the same office, both as a line prosecutor, including service as the District's Election Officer, and as Deputy Criminal Chief of

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the Major Fraud and Public Corruption unit. Most recently, she served as Director of U.S. Immigration and Customs Enforcement from 2014 to 2017.

Peter Shane is the Jacob E. Davis and Jacob E. Davis II Chair in Law at The Ohio State University's Moritz College of Law. He previously served as Attorney-Adviser in the Office of Legal Counsel (1979-1981).

Stanley A. Twardy, Jr. served as a United States Attorney for the District of Connecticut and Chief of Staff to Connecticut Governor Lowell P. Weicker, Jr. He is currently of counsel at a private practice law firm with a focus on criminal, civil and regulatory investigations conducted by federal and state agencies.

Cyrus Vance, Jr. served three consecutive terms as the Manhattan District Attorney (2010-2021). He is currently a partner at a private practice law firm with a focus on white collar criminal defense, global investigations, complex civil and criminal litigation, compliance and cybersecurity.

William F. Weld served as the U.S. Attorney for Massachusetts from 1981 to 1986; as the Assistant U.S. Attorney General in charge of the Criminal Division from 1986 to 1988; and as Governor of Massachusetts from 1991 until 1997.

Shan Wu served as counsel to Attorney General Janet Reno and was an Assistant United States Attorney in Washington, D.C.